

## National Park Service, Interior

## §51.1

guide concession contracts in the same park area?

51.81 May the Director include “special account” provisions in concession contracts?

51.82 Are a concessioner’s rates required to be reasonable and subject to approval by the Director?

51.83 Handicrafts. [Reserved]

### Subpart J—Assignment or Encumbrance of Concession Contracts

51.84 What special terms must I know to understand this part?

51.85 What assignments require the approval of the Director?

51.86 What encumbrances require the approval of the Director?

51.87 Does the concessioner have an unconditional right to receive the Director’s approval of an assignment or encumbrance?

51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

51.89 What happens if there is a default on an encumbrance approved by the Director?

51.90 How does the concessioner get the Director’s approval before making an assignment or encumbrance?

51.91 What information may the Director require in the application?

51.92 What are standard proformas?

51.93 If the transaction includes more than one concession contract, how must required information be provided?

51.94 What information will the Director consider when deciding to approve a transaction?

51.95 Does the Director’s approval of an assignment or encumbrance include any representations of any nature?

51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

### Subpart K—Information and Access to Information

51.98 What records must the concessioner keep and what access does the Director have to records?

51.99 What access to concessioner records will the Comptroller General have?

51.100 When will the Director make proposals and evaluation documents publicly available?

### Subpart L—The Effect of the 1998 Act’s Repeal of the 1965 Act

51.101 Did the 1998 Act repeal the 1965 Act?

51.102 What is the effect of the 1998 Act’s repeal of the 1965 Act’s preference in renewal?

51.103 Severability.

### Subpart M—Information Collection

51.104 Have information collection procedures been followed?

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

SOURCE: 65 FR 20668, Apr. 17, 2000, unless otherwise noted.

## Subpart A—Authority and Purpose

### §51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.* and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part

amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

**§51.2 What is the policy underlying concessions contracts?**

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

**Subpart B—General Definitions**

**§51.3 How are terms defined in this part?**

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89-249, commonly known as the National Park Service Concession Policies Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105-391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A *concession contract (or contract)* means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession

contracts are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A *concessioner* is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

*Director* means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A *franchise fee* is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

*Offeror* means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.